

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

<b>M. M., a minor child, et al.,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 1:08-cv-1080</b>
	)	
<b>MCDONALD’S CORPORATION,</b>	)	
<b>d/b/a MCDONALD’S, et al.,</b>	)	
	)	
<b>Defendants.</b>	)	

**PLAINTIFFS’ MOTION TO REMAND**

**COME NOW** Plaintiffs M. M. and M. M., minor children, by and through their natural parents and Next Friend, and Beth Miller and Frank Miller, as individuals and the duly appointed and Court ordered Next Friend of their minor children (hereinafter and collectively the “Plaintiffs”), by and through their undersigned counsel, and for their Motion to Remand, state:

1. This Motion is brought pursuant to 28 U.S.C. § 1447 to remand this case back to Missouri state court where the action was originally filed on September 24, 2007, in the Circuit Court of St. Charles County, Missouri (the “State Court”). This action was improperly removed to the United States District Court Eastern District of Missouri Eastern Division and transferred from the Multidistrict Litigation Panel to this Court in that there is no federal court subject matter jurisdiction.

2. Although the amount in controversy exceeds \$75,000.00 exclusive of costs and interest, there is no complete diversity of citizenship of the parties. This case also does not involve a federal question. The underlying claims assert pure Missouri substantive causes of action.

3. Plaintiffs are citizens of Missouri. Two of the three defendants are also citizens of Missouri, thereby destroying complete diversity of the parties. Because there is no complete diversity of the parties, there is no subject matter jurisdiction. This case involves issues solely relating to state law claims, and does not involve any federal law or statute.

4. The Missouri defendants were not fraudulently joined as parties in an effort to destroy diversity. The Missouri defendants, in fact, are legitimate parties against whom Plaintiffs have filed meritorious claims under Missouri state law. Plaintiffs intend fully to proceed with the prosecution of their Petition against all the named defendants.

5. The two defendants who are Missouri citizens are defendants, Christian Foods, L.C. and Alex Bishop, Inc. (the "Missouri Defendants"). Both of the Missouri Defendants are Missouri corporations with their principal place of business in the state of Missouri, and specifically in St. Charles County where the Plaintiffs have their family home. Plaintiffs, all of them, indisputably are residents of Missouri.

6. The underlying Petition, filed in State Court, alleges valid causes of action based on Missouri substantive law against proper defendants.

7. This Court does not have jurisdiction over the subject matter of this case and should therefore be remanded back to the Circuit Court of St. Charles County, Missouri.

8. There is no other arguable basis for federal jurisdiction in this case.

9. The underlying Petition, filed in State Court, alleges valid causes of action based on Missouri substantive law which demand personal injury damages in addition to other damages sought.

10. The Multidistrict litigation cases before this Court only focus on economic damages and do not claim damages resulting from personal injury.

11. Plaintiffs do not waive any claims seeking damages for personal injuries in addition to other damages sought.

12. Plaintiffs' tag-along case does not belong before this Court because this Court lacks subject matter jurisdiction based on diversity and because Plaintiffs assert claims for damages relating to personal injury.

13. Plaintiffs file contemporaneously with this Motion their memorandum of law in support.

**WHEREFORE**, Plaintiffs respectfully request that this Court grant Plaintiffs' Motion to Remand and remand this action back to the Circuit Court of St. Charles County, Missouri, that the Court award Plaintiffs their attorneys' fees and costs in prosecuting this motion to remand, and that the Court grant all such other and further relief as the Court deems just and proper.

Dated: April 8, 2008.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 8th day of April, 2008 the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following:

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